

STATE OF INDIANA) IN THE MARION COUNTY _____ COURT
) SS:
COUNTY OF MARION) CAUSE NO. **490070606PL027105**

STATE OF INDIANA,)
)

Plaintiff,)
)

v.)
)

ALL CERTIFIED AUTO SALES, INC.,)
KIMBERLY A. WILLOUGHBY, individually and)
EARL SCOTT WILLOUGHBY, individually,)
doing business as, All Certified Auto Sales, Inc.)

Defendants.)
)

FILED



JUN 29 2006

Mary Ann Wehmuller
CLERK OF THE
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann Wehmuller, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c).

2. The Defendant All Certified Auto Sales, Inc. (hereinafter "All Certified") is a domestic corporation, with a principal place of business in Marion County located 4615 Franklin Road, Indianapolis, Indiana. At all relevant times All Certified Auto Sales, Inc. engaged in the retail sale of used motor vehicles.

3. Defendant Kimberly A Willoughby, is the registered agent and sole principal of All Certified Auto Sales, Inc.

4. Defendant Earl Scott Willoughby (hereinafter "Scott Willoughby"), is the general manager of All Certified Auto Sales, Inc. At all relevant times Scott Willoughby acted as an agent of All Certified.

FACTS

5. As alter egos of All Certified, Kimberly A. Willoughby and Scott Willoughby, conducted, managed and controlled the affairs of the corporation as if it were their own business, and they used the Defendant corporation for the purpose of defrauding consumers as set forth herein.

6. On July 3, 2004, LaShelle Cork went to All Certified Auto Sales and met with Defendant Scott Willoughby and a salesman identified as "Ron" to discuss buying a used car.

7. Mr. Willoughby informed Ms. Cork, she could not test drive or select a car to purchase until she was approved for financing.

8. On July 3, 2004, Ms. Cork paid Mr. Willoughby \$500.00 as a down payment toward a vehicle. The receipt states "100% refundable if not financed". Attached as "Exhibit A", is a true and accurate copy of the Cork down payment receipt.

9. Prior to taking Ms. Cork's down payment, Scott Willoughby failed to disclose any terms or potential terms of financing to Ms Cork.

10. Mr. Willoughby informed Cork, that someone would call her by 3:00 p.m. that day to tell her if her credit was approved. When Cork did not receive a phone call by 3:00 p.m., she returned to All Certified and requested a return of her refund.

11. Mr. Willoughby informed Cork that she could pick up her refund on Tuesday July 6, 2004, if she brought her down payment receipt with her.

12. On July 6, 2004, Cork's sister went to All Certified with Cork's down payment receipt and requested a refund on Ms. Cork's behalf. Scott Willoughby refused to refund the down payment.

13. To date, the Defendants have failed to provide Ms. Cork with documentation indicating she was approved for financing.

14. To date, the Defendants have failed to refund Ms. Cork's \$500.00 down payment.

15. On July 12, 2004, Irma Gonzalez went to All Certified Auto Sales to look for a used car. Ms. Gonzalez met with Scott Willoughby and a salesman identified as "Ron".

16. On that date, Gonzalez made a \$1,500.00 down payment to Scott Willoughby in order to obtain financing to purchase a vehicle. Ms. Gonzalez's down payment receipt states the partial payment is "100% refundable if All Certified Auto Sales, Inc. is unable to secure credit" on behalf of Gonzalez. Attached as "Exhibit B", is a true and accurate copy of the down payment receipt the Defendants provided to Ms. Gonzalez.

17. At no time prior to accepting Ms. Gonzalez's down payment did the Defendants disclose any terms or potential terms of financing to Ms Gonzalez.

18. After making the down payment, "Ron" and Scott Willoughby told Ms. Gonzalez to return to the dealership the next day to find out if she had been approved for financing.

19. Gonzalez returned to the dealership the following day. Scott Willoughby informed her he did not have an answer and she could return the following day. Gonzalez returned to the dealership several times in the preceding days with the same result. After several days, Scott Willoughby informed Gonzalez that she was not approved and would have to complete another credit application.

20. Ms. Gonzalez submitted another credit application to the Defendants, but was later informed by an unidentified representative of the dealership that the credit application was lost or thrown away; at which time, Gonzalez requested the return of her down payment.

21. To date, the Defendants have failed to provide Ms. Gonzalez with any documentation indicating she was approved for financing.

22. To date, the Defendants have failed to refund Ms. Gonzalez's \$1,500.00 down payment.

23. On or around March 18, 2005, Barbara Cole went to All Certified Auto Sales to look for a used car. Ms. Cole met with Scott Willoughby.

24. Cole gave Scott Willoughby a \$700.00 down payment check toward the purchase of a Black Dodge Durango. Attached hereto as "Exhibit C" is a true and accurate copy of Cole's down payment check. While Scott Willoughby had Ms. Cole sign documents evidencing the purchase of the Durango, Willoughby failed to provide Ms. Cole with copies of the paperwork. Scott Willoughby told Cole to contact him on Monday March 21, 2005 to "finalize" the paperwork.

25. On Monday March 21, 2005, Ms. Cole called Scott Willoughby but he was not available. Over the course of the following two weeks, Ms. Cole attempted to call Scott Willoughby on several occasions without success.

26. Approximately three weeks after making her down payment, Cole reached Scott Willoughby by phone. Willoughby informed Cole that he had sold the Black Dodge Durango to someone else.

27. Ms. Cole demanded a return of her deposit after learning the Defendants sold the Durango.

28. To date, the Defendants have failed to refund Ms. Cole's \$700.00 down payment.
29. On August 24, 2005, Salvador Rincon went to All Certified Auto Sales to look for a used vehicle.
30. On that date, Rincon made a down payment of \$1,500.00 toward the purchase of a 2000 Chevrolet Blazer.
31. On September 1, 2005, Mr. Rincon signed a purchase order and retail installment contract at All Certified Auto Sales and took possession of the 2000 Chevrolet Blazer.
32. Prior to the due date of his first installment payment, Mr. Rincon received a telephone call from an All Certified representative. Mr. Rincon was informed he needed to return to the dealership and speak with Scott Willoughby.
33. On September 27, 2005, Rincon met Scott Willoughby at All Certified. Willoughby informed Rincon that Rincon would have to return the Blazer unless he agreed to sign a new contract at a different price. Rincon asked Scott Willoughby what the new price was, but Willoughby failed to provide this information. Rincon refused to sign a new contract and requested a refund of his \$1,500.00 down payment.
34. Willoughby provided Rincon with a written statement that the down payment would be refunded to Rincon within five business days. Attached hereto is a true and accurate copy of the statement identified as "Exhibit D".
35. To date Willoughby has failed to refund Mr. Rincon's \$1,500.00 down payment.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

36. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 35 above.
36. The transactions referred to in paragraphs 8, 16, 24, 30 and 31, are "consumer

transactions” as defined by Ind. Code §24-5-0.5-2(a)(1).

36. Defendants are suppliers as defined by Ind. Code §24-5-0.5-2(a)(3).

37. The Defendants’ representations in paragraphs 8 and 16, that consumers would receive down payment refunds if financing was not obtained for them, misrepresent the performance, characteristics and benefits of a consumer transaction in violation of Ind. Code §24-5-0.5-3(a)(1).

38. The Defendants’ representations in paragraphs 11 and 34, that down payment refunds would be made in a stated or reasonable time frame, violate Ind. Code §24-5-0.5-3(a)(10).

39. The terms of the Defendants’ partial down payment receipts referenced in paragraphs 8 and 16, are oppressively one sided or harsh, and as such are unconscionable and shall be treated as deceptive acts pursuant to Ind. Code §24-5-0.5-10(b)(1).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

40. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 39 above.

41. The Defendants knowingly committed the misrepresentations, deceptive and unconscionable acts set forth in paragraphs 8, 11, 16 and 34.

42. Defendant Scott Willoughby knowingly committed the misrepresentations, deceptive and unconscionable acts set forth in paragraphs 8, 11, 16 and 34 with intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendants All Certified Auto Sales, Inc., Kimberly A. Willoughby and Earl Scott Willoughby, enjoining them from the following:

- a. representing, expressly or by implication, that consumers will receive refunds of down payments or partial down payments if Defendants cannot obtain financing for consumers, when the Defendants know or should reasonably know they will not make refunds as represented;
- b. representing, expressly or by implication, that consumers will receive refunds of down payments or partial down payments within a stated or reasonable time frame, when the Defendants know or should reasonably know they will not provide the refunds as represented; and,
- c. soliciting consumers to enter into contracts or agreements that contain oppressively one sided or harsh terms.

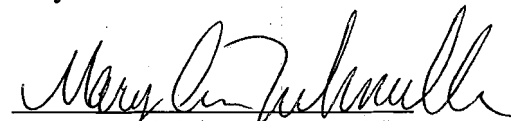
AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

- c. cancellation of consumer contracts, pursuant to Ind. Code §24-5-0.5-4(d);
- d. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), for reimbursement of all deposits, down payments, and other funds remitted by consumer [REDACTED]
[REDACTED] including, but not limited to, the persons identified in paragraphs 6, 15, 23, and 29;

- e. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- f. civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of \$500.00 per violation on the Cork, Gonzalez and Cole transactions and \$5,000.00 on the Rincon transaction, payable to the State of Indiana;
- g. civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant Scott Willoughby's intentional violations of the Deceptive Consumer Sales Act, in the amount of \$500.00 per violation, payable to the State of Indiana; and
- h. All other just and proper relief.

Respectfully submitted,
STEVE CARTER
Attorney General of Indiana
Atty. No. 4150-64

By:



Mary Ann Wehmüller, 15251-49A
Deputy Attorney General
Office of Attorney General
Indiana Government Center South
302 W. Washington, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3973
Maw:317427

7/3/04

RECEIPT

DATE		No.	
7/3/04		446289	
RECEIVED FROM		\$500	
Leshelle Park		DOLLARS	
O FOR RENT		100% Refund if not longer	
O FOR			
ACCOUNT		CASH	FROM
PAYMENT	500	CHECK	TO
BAL. DUE	500	MONEY ORDER	BY



EP01

E. Scott Willoughby
Sales Representative

All Certified

Auto Sales Inc.

4615 Franklin Road
Indianapolis, IN 46226

317-545-4900
Fax 317-545-4048



I understand **All Certified** Auto Sales will extend considerable time and resources in an effort to obtain credit on my behalf. I understand and agree that my partial payment will be 100% refundable if **All Certified** Auto Sales Inc. is unable to secure credit on my behalf. I further understand and agree that my partial payment will not be refunded if **All Certified** Auto Sales Inc. is able to secure credit on

Amount \$1500.00

Date 07-02-04

Customer Signature [Signature] Nonaka R

Date

Sales Rep Signature

Date 07-02-04

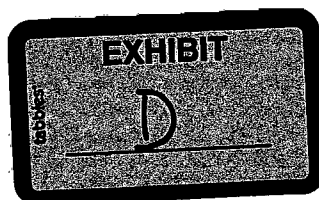


RECEIPT

DATE	8/24/05	No.	562872
RECEIVED FROM	Henry Rincon		\$1500
One thousand five hundred and 00/100		DOLLARS	
<input type="radio"/> FOR RENT			
<input type="radio"/> FOR	down payment		
ACCOUNT		<input type="radio"/> CASH	FROM
PAYMENT	1500	<input checked="" type="radio"/> CHECK	TO
BAL. DUE		<input type="radio"/> MONEY ORDER	BY

W.II Return Dep of 1600-
with in 5 Bus DAYS
9-27-05 - until 3rd
of Oct 05.

tk was Refunded.
OO Blazo



Attn: barbara cole
BARBARA DENYCE COLE

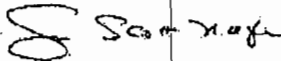
Dear BARBARA DENYCE COLE,

Thank you for banking at Fifth Third Bank. We appreciate your business and will continue to work hard to provide all the products and services to meet your financial needs. Here is the image you requested on 4/28/05.

Did you know you can access your accounts 24 hours a day, 7 days a week at www.53.com? You can view account statements, see what checks have cleared - even see images of your cleared checks. All you need is your Jeanie ® card number and password. It is safe, quick and easy.

If you have questions, please contact a Customer Service Professional at 1-800-972-3030 or visit your Fifth Third Banking Center. Again, thank you for banking with us where we are "Working Hard To Be The Only Bank You'll Ever Need ®".

Sincerely,



J. Scott Nagle
Senior Vice President
Fifth Third Bank

